



April 15, 2015

Via Electronic Delivery (FOIAonline) and Certified Mail

Regional Freedom of Information Officer
U.S. EPA, Region 8
999 18th St., Suite 500
Denver, CO 80202-2466

**Re: *FOIA Request Concerning Exempted Aquifers and Underground Injection Programs
for Class II Wells in Colorado, Wyoming, and Utah***

Dear Freedom of Information Act Officer:

I am writing on behalf of the Center for Biological Diversity (“Center”) to request documents under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). The Center is a national, nonprofit conservation organization with more than 825,000 members and online activists dedicated to protecting endangered species and wild places. Combining conservation biology with litigation, policy advocacy, media outreach, and strategic vision, the Center is working to secure a future for animals and plants hovering on the brink of extinction and the wilderness they need to survive.

A. Background

The Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*, defines aquifers meeting certain criteria as underground sources of drinking water. Underground sources of drinking water receive certain protections under the SDWA. Aquifers that meet certain criteria may be designated as exempted aquifers not subject to these protections, as part of a State-controlled Underground Injection Control Program (“UIC Program”). 40 C.F.R. § 144.7(b). All designations of an exempted aquifer must be approved by the Administrator of the Environmental Protection Agency (“EPA”) as part of a UIC Program. *Id.* § 144.7(b)(2).

EPA has approved UIC Programs for Colorado, Wyoming, and Utah. Accordingly, these states have primary responsibility or “primacy” over the regulation of Class II injection wells in their respective states, i.e., wells used for the underground disposal of wastewaters associated with oil and gas production and enhanced oil and gas recovery. *See* 42 U.S.C. § 300h-4. Class II injection wells are prohibited in underground sources of drinking water, 40 C.F.R. § 144.12(a), but are permitted in exempted aquifers. *See id.* §§ 144.7, 146.4.

B. Document Request

Pursuant to FOIA and its implementing regulations, we request copies of the following documents and records in the EPA's possession:

- (1) A list of all aquifers (including the names of the zones and formations) in Colorado, Wyoming, and Utah that EPA has designated as exempt ("exempted aquifers");
- (2) All documents that list or describe exempted aquifers, including, but not limited to, maps showing the location of exempted aquifers;
- (3) All documents and records prepared or received by the EPA for the purpose of designating any aquifer in Colorado, Wyoming, or Utah as an exempted aquifer pursuant to 40 C.F.R. § 144.7(b);
- (4) All documents that describe EPA's and EPA Region 8's criteria, policies, and procedures, for determining whether an aquifer is exempt;
- (5) All memoranda of agreements between EPA and Colorado, Wyoming, or Utah regarding each state's UIC Program for Class II injections;
- (6) All reports pertaining to Colorado's, Wyoming's, and Utah's UIC Programs for Class II injections, prepared by these states for EPA's review;
- (7) All other documents pertaining to Colorado's, Wyoming's, and Utah's UIC Programs for Class II injections.

The term "documents and records" means all forms of written or recorded matter, including correspondence, memoranda, e-mail, data sheets, reports, evaluations, summaries, opinions, journals, calendars, statistical records, notes, recordings of telephone calls, memoranda and other writings of or relating to telephone conversations and conferences, minutes and notes of transcription of all meetings and other communications of any type, and any other information that is stored electronically and that can be retrieved in printed, graphic, or audio form, including, but not limited to, information stored in the memory of a computer device, data stored on removable magnetic or optical media, data used for electronic interchanges, digitized pictures and audio, and voicemail.

We request that, where possible, documents be provided electronically (on a CD, for example) to avoid copy expense and to further expedite our receipt of the materials. If the agency makes records available electronically, we request that the records be made available in their native format.

We request that priority be given to provision of the first document requested. We also request that responsive records be released as soon as they are available, but in no event later than 20 days as required by law. To the extent that some subset of the requested records is

readily available and can be provided immediately, please send it immediately while EPA searches for other records.

C. Fee Waiver Request

We request that EPA waive all fees in connection with this matter. The Center meets FOIA's requirements for a fee-waiver. *See* 5 U.S.C. § 552(a)(4)(A)(iii), 40 C.F.R. § 2.107(1); *see also McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (FOIA "is to be liberally construed in favor of waivers for noncommercial requesters").

1. The subject of the request concerns "the operations and activities of the government."

The subject matter of this FOIA request relates directly to the operations and activities of the federal government. 5 U.S.C. § 552(a)(4)(iii). The requested documents and records pertain to EPA's responsibilities and obligations to protect underwater drinking water supplies from pollution, including its designation of aquifers as exempt from SDWA protections.

2. The disclosure is "likely to contribute" to an understanding of government operations or activities.

The documents requested will contribute to an understanding of government operations, including which aquifers EPA has designated as exempt, EPA's decision-making process in approving exemptions, and whether EPA and the State UIC Programs are properly enforcing the SDWA. 5 U.S.C. § 552 (a)(4)(A)(iii); 40 C.F.R. § 2.107(k)(2). Because these documents are not in the public domain, the public's understanding of these issues is likely to be significantly enhanced by their disclosure.

3. The disclosure of the requested information will contribute to "public understanding."

The information requested will contribute to public understanding of how EPA is discharging its duties under the SDWA. The Center intends to use the requested information to educate the public about which underground sources of drinking water have been designated as exempt, how exempted aquifers were so designated, and whether oil and gas wastewater disposal is being properly regulated.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policy, and law. It regularly publishes research papers concerning a variety of environmental topics, including reports concerning the environmental impacts of oil and gas development and the government's regulation of these activities. The Center disseminates these reports to its membership, other conservation organizations, and the media. These reports are publicly available on our website. *See* <http://www.biologicaldiversity.org/publications/papers/index.html>.

The Center distributes information in a variety of other formats. Information is regularly disseminated in e-mail newsletters and action alerts to more than 825,000 members and online activists, and in tweets to more than 30,000 followers on Twitter. *See* <http://www.biologicaldiversity.org/publications/earthonline/index.html>; <https://twitter.com/centerforbiodiv>. Three times per year it sends a printed newsletter to more than 50,000 members, which is also posted online. <http://www.biologicaldiversity.org/publications/earth/index.html>.

The Center has a strong interest in disseminating the requested documents to the public, and in increasing the public's understanding of EPA's activities, because of its active and continuing interest in proper enforcement of the SDWA, consistent with the Center's conservation mission. Release of the information will also empower the Center's members and the public to engage in public advocacy efforts to protect and conserve scarce underground sources of drinking water, and to more effectively evaluate the need for litigation or grassroots action.

4. The disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

The requested information will shed light on EPA oversight of the UIC Programs in Utah, Colorado, and Wyoming, including whether EPA is acting properly and the possible effects of EPA's actions. The documents are not in the public domain, and without them, the public has no other means of understanding whether EPA is properly overseeing the UIC Programs. The Center's track record of active participation in oversight of governmental agency activities and its consistent contribution to the public's understanding of agency activities is well established. *See* section III above. Thus, the public's understanding of these matters, as compared to the level of public understanding existing prior to the disclosure, will be significantly enhanced by the dissemination of this information.

5. Obtaining the information is of no commercial interest to the Center.

Access to government documents is essential to the Center's role of educating the general public. The Center, a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

If you have any questions regarding this request, please do not hesitate to contact me at wpark@biologicaldiversity.org or (415) 436-9682 x 338. Thank you for your prompt attention to this request.

Sincerely,

/s/ Wendy Park